

**COMMITTEE ON TRANSPORTATION & INFRASTRUCTURE
AVIATION SUBCOMMITTEE**

**Airport Deregulation
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Testimony of Edward P. Faberman, Executive Director



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Chairman Mica, Ranking Member DeFazio, Members of the Committee – It is a pleasure to appear before you today to discuss an issue that is critical to the continued economic growth of communities throughout our country, the expansion of airline service by low-fare carriers.

As a result of the expansion of competition, particularly from low-fare carriers, into new domestic markets, Americans are returning to the skies. As Secretary Mineta stated at the FAA Commercial Aviation Forecast Conference in Washington, D.C. on March 25, 2004:

... the combination of shifting demand for air travel, and the emergence of more low-fare airlines, has set the stage for major change in the airline industry... demand is still off, demand for low-fare service is strong and growing stronger... We think that the changes that are underway now are the kind of market-based, cost competition that the architects of deregulation thought would happen 25 years ago. Consumers are driving these changes – and that, ultimately, is a very healthy development.

Secretary Mineta also stated:

So, what does the future hold?...Simply put, it means that, at least right now, carriers charging the lowest fares and maintaining the lowest cost are profitable, requiring the legacy carriers to make fundamental changes – especially in their cost structure – to survive in a more competitive marketplace.

American travelers in communities from throughout the country are searching for more affordable travel alternatives. The ability of low-fare carriers to offer price and service alternatives has increased demand for their services. While legacy carriers are now offering lower fares and some are even pretending to be low-fare carriers, according to Secretary Mineta for these carriers to be profitable, they must also make fundamental changes to their cost structure. Since a few carriers believe that it may be more important to block competition rather than be profitable, some of these carriers hold on to existing airport facilities or limit the availability of facilities although they have reduced operations.

Low cost carriers average approximately 9 daily turns per gate. At some airports, those numbers may be as high as 11 or 12. At the same time, at some congested airports, larger carriers may average 3 to 4 turns per gate and, in some cases, only utilize gates to park aircraft. With the dramatic increase in regional jet flights at some airports, the 3 to 4 turns per day may be with 50 seat aircraft. While in an open market system, a carrier should be free to spend as much money as

it wishes to control facilities, that is not the case when lack of facilities blocks competitive travel options.

In a speech in the beginning of March, Secretary Mineta stated, "A healthy transportation sector is essential to President Bush's efforts to keep America on track for a more prosperous future...Transportation has never been more important to America's economic future than it is right now." (Commercial Club of Chicago, March 10, 2004)

While many travelers and communities have benefited from increased low-fare travel opportunities, true competition remains a dream in some markets because of barriers that continue to block entry and expansion. A number of factors continue to block true deregulation and today's hearing addresses one issue that has historically limited expansion of entry by low-fare carriers into airports - the unavailability of gates and other airport facilities. This is not a new issue; it is a problem that has existed since deregulation.

The focus placed on facility issues and the requirement for competition plans has made an important difference in opening airports for new entry. This is not the first time that government has attempted to address this issue. The requirement that competition plans be submitted and reviewed has changed the environment.

For example, in the early 1980s, the FAA and the Department had to help People Express obtain gates and facilities at Minneapolis – St. Paul International Airport in order to serve that airport.

On July 27, 2000, Joel Klein, Assistant Attorney General, Antitrust Division, U.S. Department of Justice ("DOJ"), during testimony before the Senate Commerce Committee, noted that the government has a responsibility to review and challenge the sale of facilities if the sale would result in a lessening of competition.

In addition to challenges to mergers and acquisitions of stock, the Division has also challenged acquisitions of assets that it concluded would be competitively problematic. The Division has moved to block acquisition of gates or slots when it thought such acquisitions would lessen competition, as demonstrated by its challenges to Eastern's proposal in 1989 to sell gates to USAir at the gate-constrained Philadelphia International Airport and Eastern's proposal in 1991 to sell slots and gates at Reagan Washington National Airport to United.

In 1989, Secretary Sam Skinner noted that DOT recognizes the potential for airport gate abuse:

Earlier this year, DOT threatened to file an anti-trust suit against US Air – the dominant carrier airline in Philadelphia – if the airline went ahead with plans to purchase an additional eight gates from Eastern for \$70 million. The threat worked, thereby allowing outsider Midway Airlines to acquire Eastern's assets and establish a competing hub at Philadelphia.

David Martindale, "Gates Games", *Airline Business Magazine*, October 1989.

Airline Business Magazine (October 1989) included the following:

In January, AOCI conducted a comprehensive survey of its US members to assess the availability of gates. Results of the study are being released this fall. . . . One objective of the AOCI survey was to learn how many airports could provide a hypothetical new entrant with at least three adjacent gates during the busiest hour of the day. Quite simply, the results of the AOCI study make a mockery of [DOT's] theory of contestability.

Among the anti-competitive airport gate tactics employed by the US airlines are:

- Hoarding gates.
- Sub-leasing gates.
- Blocking new gates.
- Destroying old gates.

The need to promote entry of new entrants into closed markets was recognized as an essential part of deregulation. As Alfred Kahan noted:

The key to lower prices and improved efficiency is competition, and the key to competition is competitors...A downward zone, without entry, would not reliably produce lower prices, since the threat of entry — not charitable motives — is the only sure incentive for carriers to reduce their prices. And upward fare freedom — again, absent freedom of entry — poses an immediate threat of exploitation of consumers in all those markets where regulation under the present Act has failed to create competition. The proposed bill would make it easier for carriers to enter new markets in three important ways, and for that reason, more than any other, we support it.

Testimony of Alfred Kahn, Hearings before the Subcommittee on Aviation, House Committee of Public Works and Transportation on HR 11145 (Airline Regulatory and Reform Hearing) March 6, 1978

The Deregulation Act emphasized the importance of entry into all airports. Competition and new entry are the backbones of the airline deregulation. In order for deregulation to continue, we must adhere to the following:

(10) Avoiding unreasonable industry concentration, excessive market domination, monopoly powers...

(13) Encouraging entry into air transportation markets by new and existing air carriers and the continued strengthening of small air carriers to ensure a more effective and competitive airline industry. (49 U.S.C. §40101)

A number of DOT studies during the past several years have cited gate and facility problems as a factor that blocks competition and entry.

Airline deregulation can work well only if market forces can discipline the pricing behavior of all air carriers. As documented in numerous academic and government reports, significant new entry in concentrated airline markets results in lower airfares, often dramatically lower. But if airlines cannot gain access to gates, baggage claim areas, passenger check-in and hold rooms, and other essential airport facilities on reasonable terms, they will be unable to compete successfully against air carriers that do have such access. Moreover, unless there is a reasonable likelihood that a new entrant's short-term and long-term needs for gates and other facilities will be met, it may simply decide not to serve a community.

[U]ntil recently, the Department was not pro-active in facilitating efforts by new entrants to gain access to airports or in monitoring airports compliance with the reasonable access assurance. We will need to be **vigilant** in assuring that airports meet their legal obligations to accommodate all qualified airlines. (p. 30)[Emphasis added]

FAA/OST Task Force, Airport Business Practices and Their Impact on Airline Competition, October 1999, Access Is Essential, p. vi

...airports that are chronically short of gates and other passenger facilities for use by potential competitors should be prompted by the federal government – and even compelled through the withholding of federal aid – to make sufficient facilities available...The allocation of airport gates and aircraft parking positions – necessary for enplaning and deplaning passengers, loading and unloading baggage and supplies, and refueling and servicing the aircraft – would seem to be straightforward and uncontroversial. Yet there have been repeated complaints that shortages of available gates at some major airports – especially hubs – are an obstacle to airline competition. As with slots, there is concern that incumbent airlines are dominating scarce gate space to the detriment of rivals and potential entrants...In the committee's view, limited access to airport gates can be an obstacle to entry that warrants close monitoring; DOT should take remedial action when airport operators fail to ensure that gates are being used and supplied efficiently.

Entry and Competition in the U.S. Airline Industry Issues and Opportunities, special Report 255, Transportation Research Board National Research Council

We share the TRB's belief that providing prospective entrants with access to gates and other facilities on reasonable terms results in more competition, which in turn, results in lower average fares and better service for air travelers.

An air carrier's financial viability often depends on serving key business and leisure markets, which requires securing reasonable access to airport gates and other facilities.

DOT Response to the TRB report, Oct. 24, 1999

In March 1998 testimony, John Anderson, Director of Transportation issues at GAO, stated in his testimony before the Senate:

We reported in October 1996 that operating barriers at key hub airports in the upper Midwest and the east, combined with certain marketing strategies of the established carriers, had two effects on competition. The operating barriers and marketing strategies deterred new entrant airlines and fortified established carriers dominance of those hub airports and routes linking those hubs with nearby small- and medium-sized-community airports.

The above referenced reports and statements acknowledge that airport facility problems have blocked new entrants from establishing competitive operations at numerous airports. As result of the attention paid to this issue by this Committee and the Department of Transportation, access problems at several airports have been addressed allowing new levels of competition. During the past several years, low-fare carriers have advised the Department about facility problems at a number of airports. In most of those cases after receiving the complaint from a carrier, the Department and FAA officials raised the facility problems with airport officials. In some cases, the Department and FAA officials visited the airports in question. In about every case, the Department/FAA involvement in the carrier's "complaint" resulted in resolution of the facility need. As a result, new entrants are expanding at BOS, PHL, DFW, and other airports. There is little doubt that the requirement to file a competitive plan and the Department's involvement resulted in an acceptable resolution in each of these cases. This was, in large part, the result of Congressional direction that an airport must provide a report if it is unable to accommodate a request for facilities.

As a result of the success of these efforts, we fully support:

SEC. 424. COMPETITION DISCLOSURE REQUIREMENT FOR LARGE AND MEDIUM HUB AIRPORTS.

Section 47107 is amended by adding at the end the following:

`(s) COMPETITION DISCLOSURE REQUIREMENT-

`(1) IN GENERAL- The Secretary of Transportation may approve an application under this subchapter for an airport development project grant for a large hub airport or a medium hub airport only if the Secretary receives assurances that the airport sponsor will provide the information required by paragraph (2) at such time and in such form as the Secretary may require.

`(2) COMPETITIVE ACCESS- On February 1 and August 1 of each year, an airport that during the previous 6-month period has been unable to accommodate

one or more requests by an air carrier for access to gates or other facilities at that airport in order to provide service to the airport or to expand service at the airport shall transmit a report to the Secretary that--

`(A) describes the requests;

`(B) provides an explanation as to why the requests could not be accommodated; and

`(C) provides a time frame within which, if any, the airport will be able to accommodate the requests.

`(3) SUNSET PROVISION- This subsection shall cease to be effective beginning October 1, 2008.'.

Under this Section, an airport only submits a report if it has not been able to accommodate a request for gates or other facilities. By the way, the request could come from any carrier. Our experience has been that most airports are now taking steps to provide some access when requested. If resolved, the airport would not have to submit a report. Therefore, this provision is not unreasonable and must remain in place to support the establishment of barrier-free airports.

Having addressed the issue of competition plans, there are other requirements and factors that should be examined in connection with monitoring airport actions to promote competition.

In reviewing airport actions, there is a need for the government to obtain and review certain information. Having said that it is important that the information collection requirements placed on all parties be held to the minimum necessary to determine whether a carrier is being treated fairly as it attempts to enter or expand at an airport.

The competition plans that must be submitted under Public Law 106-181 provide important data for governmental oversight of the competitive marketplace. Some of the data collected, including gate utilization, numbers of gates, types of gates, and gate availability for new entrants should be submitted and updated on a regular basis. Moreover, this information should be available to the public. It is also essential that the government monitor subleasing of gates and facilities. It is not unusual to learn that gates have been subleased from one large carrier to a marketing partner although a smaller carrier was not given an opportunity to obtain those same facilities.

We would like to see the government rank airports in terms of steps taken to enhance competition. The industry should have this information available and it should be known to local and state officials as well as to members of the public.

At the same time, we would not object to a reduction in the information that must be provided to FAA under the airline competition plan requirements. The FAA should also explore the possibility of waiving some of the reporting requirements for airports if no complaints have been filed against those airports about inability to accommodate a new entrant.

One other issue that needs to be addressed is the request by certain airports that they be allowed to utilize various airport funds to attract new service. Our experience has been that when airports provide marketing or other funds to attract new service, it is more likely that the new service will

work. These local funds are important since a carrier entering a market needs time to build a market for its services and to address competitive efforts. These funding efforts have been successful in attracting legacy and new entrant carriers. It is for this very reason that we believe that the DOT small community grant program has been highly successful. In some cases the Department did not have to provide all of the approved funding since the new service was so successful.

We agree that the government should consider changes to the existing regulations that would allow airports to utilize airport funds to attract new entrants that will lower fares if the airport has obtained matching local funds and the carrier is prepared to take some of the risks.

Times are changing and to ensure that all are able to seek competitive low fare service, all parties – the government, airports and carriers must be able to change some policies and requirements to expand the joys of airline deregulation.

I thank you for again focusing on issues that impact true airline competition. We believe that all communities should be able to enjoy low-fare service. We look forward to working with you to make that a reality by eliminating all barriers to entry. The founders of deregulation would not have it any other way. I would be delighted to take any questions.